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UKIO

August 8, 1996

RECEIVED HAND DELIVER

William F. Caton Acting Secretary Federal Communications Commission Washington, D.C. 20554

FEDERAL COMMUNICATION OFFICE OF SECRETARY

AUG - 9 1996

ATTN: 1800/1800D

RE: Amendment of Section 73.202(b), Table of Allotments,

Jupiter and Hobe Sound, Florida

Dear Mr. Caton:

On July 29, 1996 Jupiter Radio Partners filed an original and four copies of its "Petition For Rule Making And Request For Order Modifying Construction Permit" ("Petition") filed in connection with the FM allotment in Jupiter, Florida.

It has come to counsel's attention that some copies of the Petition may be missing certain pages of the Rule making petition. Rather than submitting the missing pages, Jupiter Radio Partners is herewith submitting five complete and correct copies of the Petition filed on July 29, 1996.

Counsel apologizes for any inconvenience to the Commission staff caused by the error.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

JUPITER RADIO PARTNERS

Joseph E. Dunne III

Its Attorney

JED:A32 enclosure

xc: Katherine Shirley (FCC, Policy and Rules, Hand Deliver)

No. of Challes readd Od /



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FEDERA!, COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: 1800/1800D

RE: Amendment of Section 73.202(b), Table of Allotments,

Jupiter and Hobe Sound, Florida

Dear Mr. Caton:

Transmitted herewith on behalf of Jupiter Radio Partners is an original and four copies of its "Petition For Rule Making And Request For Order Modifying Construction Permit" filed in connection with the FM allotment in Jupiter, Florida.

The Commission is advised that, effective August 5, 1996, the undersigned may be reached at a new address, as follows:

Joseph E. Dunne III
Attorney At Law
150 E. Ninth Street
Suite 300
Durango, Colorado 81301
(o) 970-385-7312
(f) 970-385-7343

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

JUPITER RADIO PARTNERS

Joseph Z. Dunne III

Its Attorney

JED:A32 enclosure

xc: Patricia S. Dahlin

Federal Communications Commission

Washington, D.C. 20554

In the Matter of)	MM Docket No	et No	
)	RM		
Amer	adment of Section 73.202(b))			
(Tabl	e of Allotments))			
FM E	Broadcast Stations)			
)			
Jupite	er and Hobe Sound, Florida)			
То:	Chief, Mass Media Bureau				
10.	Policy and Rules Division				
	Allocations Branch				

PETITION FOR RULE MAKING AND REQUEST FOR ORDER MODIFYING CONSTRUCTION PERMIT

Jupiter Radio Partners ("JRP"), permittee of WTPX(FM), Jupiter, Florida, by its attorneys, and pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully requests the Commission to amend Section 73.202(b) of the Rules to: (a) delete Channel 288C3 from Jupiter, Florida; (b) add Channel 288C2 to Hobe Sound, Florida; and (c) modify the construction permit for WTPX(FM), Jupiter, Florida, to specify "Hobe Sound, Florida" as the Station's City of License. In support whereof, the following is shown:

Background

1. WTPX is authorized to operate on Channel 288C3 at Jupiter, Florida.

JRP requests the Commission to delete Channel 288C3 from Jupiter, upgrade the channel to 288C2 and reallot it to Hobe Sound, Florida, with a concurrent modification of the construction permit of WTPX to operate on Channel 288C2 at Hobe Sound. This change is permissible under Section 1.420(i) of the Rules,

which authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's present allotment.

2. Two factors must be demonstrated in order to change a station's city of license in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission held that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of license in determining whether an allotment proposal should be approved." See, Modification of FM and TV Authorizations (New Community of License), 4 FCC Rcd 4870 [66 RR 2d 877] (1989). JRP's proposal complies with the Rules and Commission policies, i.e., the channel changes are mutually exclusive, and the rule making will not deprive Jupiter of its only local transmission service. Moreover, as set forth below, JRP's proposal serves the public interest by proposing first local transmission service to a presently unserved community.

Expression of Continuing Interest

3. If the Commission allots Channel 288C2 to Hobe Sound, JRP will promptly file an application for a minor change construction permit to operate

WTPX at Hobe Sound, and upon grant, will promptly construct and operate the facilities.

4. Exhibit 1 is a Technical Exhibit, which is incorporated herein by reference, that provides the Commission with technical information about the proposed Jupiter/Hobe Sound channel exchange.

Jupiter, Florida

5. Jupiter had a 1990 population of 24,986. Jupiter has three commercial broadcast stations assigned to it. In addition to WTPX, Jupiter is served by WJBW(FM), on Channel 258A and WMLZ(AM) on 1000 kHz. Thus, Jupiter is already served by operating standard and FM stations, and is, therefore, presumptively well-served by local broadcast media.

Hobe Sound, Florida

6. Technical Exhibit 1 indicates that Hobe Sound is a Census Designated Place that had a 1990 population of 11,507; an increase over the 1980 population of 6,822. Hobe Sound is a *bona fide* community with its own post office, two zip codes (33455 and 33475), elementary school, Chamber of Commerce, fire station, child care center, nursing home, and library. Plans exist for the construction of a new and larger library facility to accommodate the community's growing population. Exhibit 2, page 10. Exhibit 2 to this Petition is a copy of a "Community Guide" printed by the Hobe Sound Chamber of Commerce which includes additional information on these municipal services and other commercial

establishments located in Hobe Sound. Active community organizations serve Hobe Sound, including: the Community Coalition of Hobe Sound; the Hobe Sound Women's Club, Inc.; an AARP Chapter that meets at the Hobe Sound Civic Center; and, the Hobe Sound-Port Salerno Chapter of the Rotary Club. Exhibit 2, pp. 14-15. Hobe Sound Beach, Hobe Sound Nature Center, Inc., and three parks, including the Jonathan Dickinson State Park, are located in Hobe Sound. Hobe Sound has numerous commercial businesses many of whom have the name "Hobe Sound" in their title. In addition to a public elementary school, Hobe Sound boasts a private school, Hobe Sound Christian Academy and two institutions of higher education: Hobe Sound Bible College; and, a campus of Palm Beach Atlantic College. Therefore, Hobe Sound possesses the requisite "social, economic and cultural components that are commonly associated with community status." See, FM Table of Allotments (East Hemet, CA), 67 RR 2d 146, 147 (1989).

7. By way of comparison, Hobe Sound has a far greater population and more indicia of separateness than Semora, North Carolina, a community which wasn't listed in census reports, but which the Commission found was a community for allocation purposes because of its local post office, local community organizations, churches, and several businesses. FM Channel Allotments

(Semora, NC), 5 FCC Rcd 934, 67 RR 2d 610 (1990). Likewise, the Commission found Miramar, Florida to be a "community" for allotment purposes even though

the community depended on the county for many basic services, because the community boasted two churches, businesses, and a bank. See, FM Channel Allotment (Miramar, FL), 6 FCC Rcd 5778, 69 RR 2d 1641 (M. Med. Bur., 1991).

- 8. In New Community of License, supra, the Commission stated that, when a station seeks to change its community of license from a community outside a U.S. Census Bureau "Urbanized Area" to a community within an Urbanized Area, the Commission will require a special showing be made that the new community is sufficiently independent from the nearby larger community in order for the Commission to determine whether a preference for first local service is warranted. This showing is required to ensure that the licensee is actually seeking to provide first local service to a new community of license and not to a larger nearby Urbanized Area.
- 9. The "Urbanized Area" policy does not apply to JRP's proposal. No special showing is necessary in this case since JRP is seeking to change the community of license of WTPX from Jupiter, Florida, which is located within the West Palm Beach, Florida, Urbanized Area, to Hobe Sound which is located within the Stuart, Florida, Urbanized Area. Therefore, JRP is not seeking to change the community of license of WTPX from a small community outside an Urbanized Area to a community within a larger nearby Urbanized Area. The Stuart, Florida, Urbanized Area has a considerably smaller population (1990)

Census population - 80,069) than the West Palm Beach, Florida, Urbanized Area (1990 Census population - 794,848). A preference for first local transmission service is warranted in this case since Hobe Sound has no broadcast stations assigned to it, WTPX would bring first local transmission service to Hobe Sound, and the <u>Urbanized Area</u> doctrine is inapplicable.

Public Interest Considerations

10. In changing its city of license, WTPX proposes to relocate its transmitter site. The Technical Exhibit demonstrates that the area gained by the proposal will be 138% or 3,535 square kilometers (land area). See Exhibit 1. The loss area will be 24% or 1,026.9 square kilometers (land area). Therefore, there will be a net gain of 2508.1 square kilometers. The loss area is located within the West Palm Beach Urbanized Area, receives aural services from more than five stations and is considered to be a well-served area. See, FM Table of Allotments (Douglas, Tifton and Unionville, GA), 10 FCC Rcd 7706 (1995). In addition, since WTPX has never been on the air, the change in community of license will not cause any disruption to existing service within the loss area, or discomfit existing radio listeners in any area. Since Jupiter will continue to receive local service from two commercial broadcast stations, JRP's proposal will not deprive Jupiter of its only local transmission service.

- 11. Technical Exhibit 1 demonstrates that 100 percent of Hobe Sound would be entirely covered by a 70 dBu or better signal from WTPX(FM). Thus, modification of the license for WTPX would comply with the Commission's city-grade contour coverage requirements.
- 12. The Commission's priorities for assigning FM allotments are set out in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 [51 RR 2d 807] (1982). They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, first local service to Hobe Sound is greatly preferred to third local service to Jupiter. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 288C2 to Hobe Sound, Florida.

WHEREFORE, JRP respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

Florida

	Present	<u>Proposed</u>
Jupiter Hobe Sound	258A, 288C3	258A ¹ 288C2

Conclusion

AM Station WMIZ, 1000 Khz, will also continue to be licensed to Jupiter.

JRP requests the Commission to (a) allot Channel 288C2 to Hobe Sound, Florida, and (b) modify the license of WTPX to operate on FM Channel 288C2 at Hobe Sound. If the FCC modifies the license of WTPX to operate on Channel 288C2 at Hobe Sound, JRP will timely file an application for minor change construction permit to operate WTPX at Hobe Sound, and upon grant thereof, JRP will construct the new facilities and operate them.

Respectfully submitted,

JUPITER RADIO PARTNERS

By:

oseph E. Dunne III

Its Attorney

LAW OFFICES OF JOSEPH E. DUNNE III 150 W. Ninth Street Suite 300 Durango, CO 81301 (970) 385-7312 July 29, 1996



REQUESTED RULE MAKING JUPITER RADIO PARTNERS, INC. 288 C2 - 105.5 MHZ HOBE SOUND, FLORIDA MAY 1996

Jupiter Radio Partners, Inc. (herein after referred to as "Jupiter") is the permittee of WTPX (FM), 288C3 at Jupiter, Florida. Jupiter requests that the C3 allotment at Jupiter, Florida be changed to 288 C2 allocated as first licensed service at Hobe Sound, Florida

ALLOCATION

The geographic coordinates of North Latitude 27° 16′ 03″ and West Longitude 80° 12′ 10″ meet all §73.207 allocation requirements.¹ Exhibit #1 demonstrates this clearance. WYMR, Sebring, Florida has been ordered to Channel 289C3 and ordered to vacate Channel 288A through Docket 93-65, RM-8273.

CITY GRADE COVERAGE

From the proposed allocation site, the 3.16 mV/m city grade signal covers 100 percent of Hobe Sound, the community of license. The community is approximately 24 KM south; the class maximum C2 3.16 mV/m extends 32.5 KM.

¹ The -0.49 KM shortage to 288C2 at Naples Park rounds to zero shortage.

REFERENCE SITE DETAIL

The reference site is located on Hutchinson Island, a Florida barrier island. The reference site is 1.4 KM northwest of another tower depicted on the Eden (Florida) Quadrangle (see Exhibit #2). Although this site is near the Atlantic Ocean, it is on dry land located near a trailer park. Other industries are also on the island as demonstrated by the Hutchinson Island Nuclear Power Plant just 10 KM north of the reference site. Access to the site would be via Florida Highway A1A. The site appears not be located in a national forest, wildlife preserve or on other restricted lands.

REMAINING JUPITER SERVICES

When this requested rule making is granted and Channel 288 C3 is removed, the City of Jupiter, Florida will still have assigned to it WJBW, 258A and AM broadcast station WMLZ, 1000 kHz.

HOBE SOUND, FLORIDA

The addition of Channel 288C2 to Hobe Sound would represent the first aural service licensed to that community. The 1990 Census depicts Hobe Sound as having a population of 11,507 persons which is an increase over the 1980 population of 6,822. Hobe Sound is a census designated place. More detailed information on Hobe Sound is found elsewhere in this Petition. Hobe Sound is located within the Stuart, Florida Urbanized Area. However Jupiter, Florida is locted within the West Palm Beach, Florida Urbanized Area. The 1990

Census lists the population of the West Palm Beach Urbanized Area at 794,848 persons while the Stuart Urbanized Area is 80,069 persons.

GAIN / LOSS AREAS

The current WTPX, Jupiter, Florida application proposes to serve 566,835 persons and 2,555 sq km (land area). From the reference site proposed herein, 423,970 persons and 4,249 sq km (land area) would be served. When the Class C2 facility is actually built, there is a likelihood that it will be built at a tower site currently under construction. From this location (and utilizing a directional antenna and §73.215 processing) 716,296 persons and 3210 sq km (land area) will be served.

Because of the distance between the current Jupiter site and the proposed Hobe Sound site, there are loss areas and gain areas to consider. Exhibit #3 is a scale representation of the respective 60 dBu contours.

Assuming WTPX is ordered to Class C2, from the C2 reference location there is a gain area of 138% or 3535 sq km (land area). Simultaneously there is a loss area of 24% or 1026.9 sq km (land area). The loss area is within the West Palm Beach Urbanized Area and receives aural service from more than five stations.

CONCLUSION

When ordered, Jupiter Radio Partners, Inc. will timely file a FCC Form 301 Application to commence broadcasting on the new channel allocated to the new community of license. Jupiter hereby requests the following changes of §73.202:

Jupiter, FL

Hobe Sound, FL

Present

258A, 288C3

None

Proposed

258A

288 C2

The information contained herein is true and correct to the knowledge of the undersigned.

Clifton (Moor

Bromo Communications, Inc.

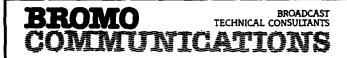
May 28, 1996

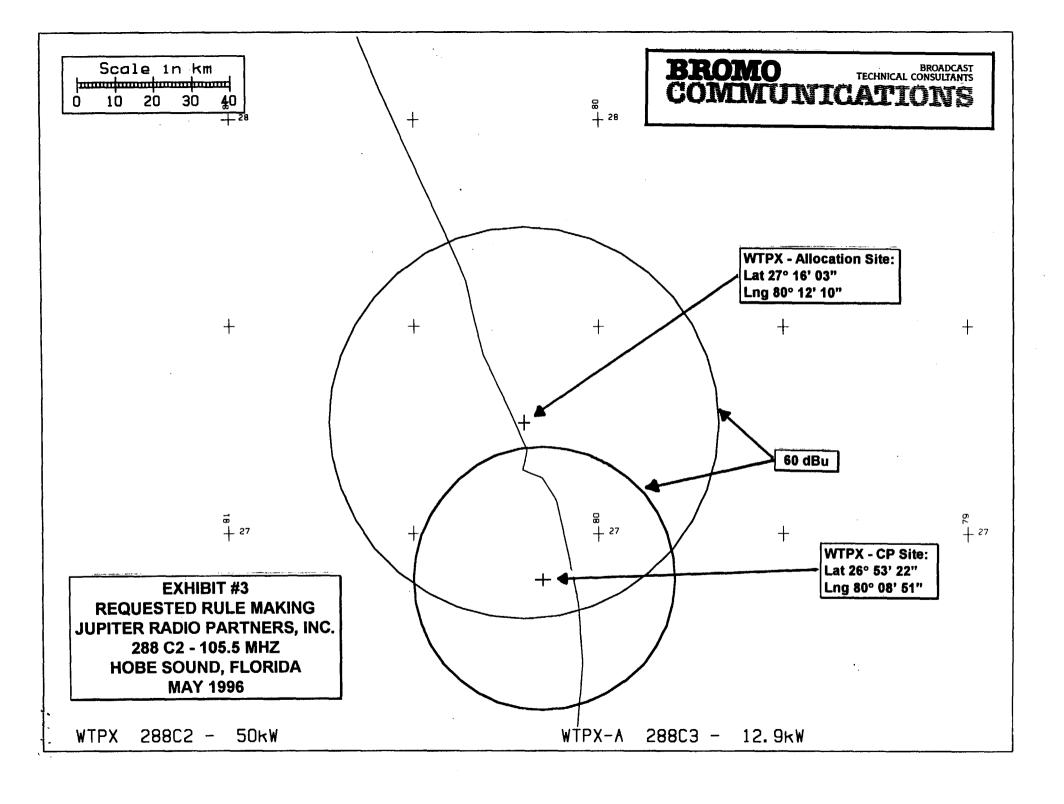
Searching at Reference Site Hobe Sound, Florida

RE 27 80	FERENCE 16 03 N 12 10 W	, ~ .		Current CHANNEL	CLASS C2 rules spac 288 -105.5	ings MHz -		DISPL DATA SEARCH	AY DATES 05-31-96 06-11-96
	CALL	CH# LAT	CITY	G	STATE PWR	BEAR'	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
-	WTPX.A	288C3	Jupiter	08 51	FL 18.500 kW	172.5	42.25	177.0 110.0	-134.75 *
	WTPX.C CPMZCN >One-St	288C3 26 5 Jupito cep Ap	Jupiter 3 21 80 er Radio plicatio	08 49 Partners	FL 10.000 kW	172.5 145M E	42.28 26.3 3MPH9505	177.0 110.0 19IF	-134.72 * 961222
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	WXRM.C	288C3	Naples :	Park	FL 6.300 kW	236.2	189.51	177.0	12.51 970607
	WKQS LI CN	234C3 27 3	Gifford 3 21 80 5, Inc.	22 09	FL 25.000 kW	332.8	35.92 22.3	17.0 10.6	18.92

ALLOCATION STUDY

EXHIBIT #1
REQUESTED RULE MAKING
JUPITER RADIO PARTNERS, INC.
288 C2 - 105.5 MHZ
HOBE SOUND, FLORIDA
MAY 1996





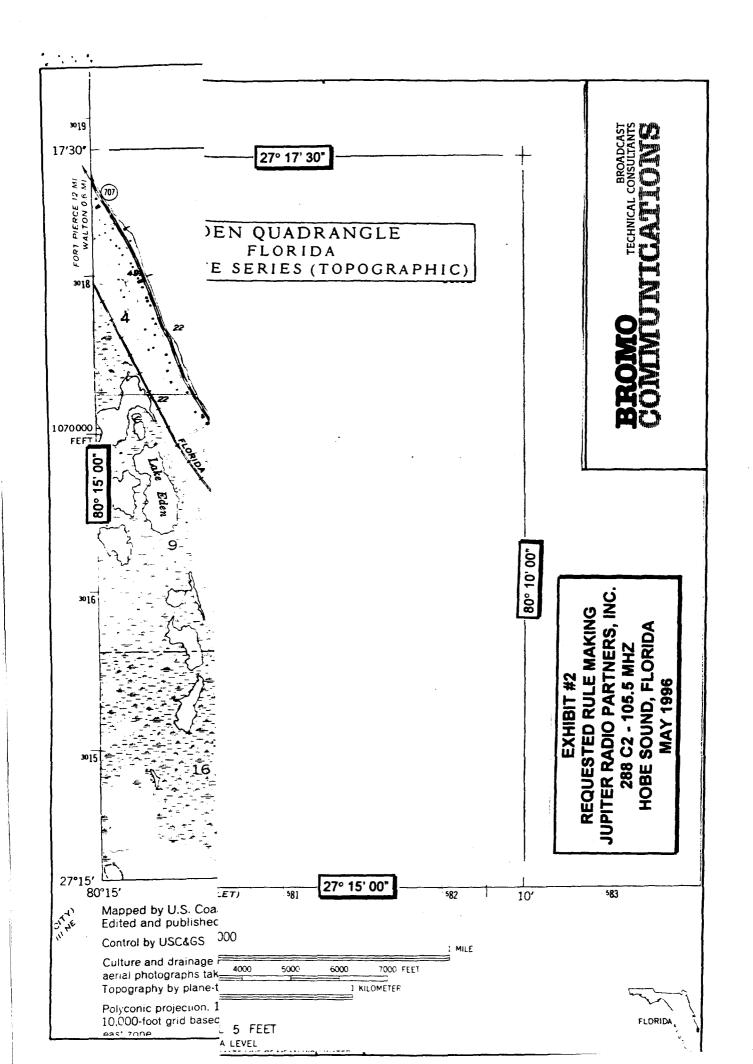
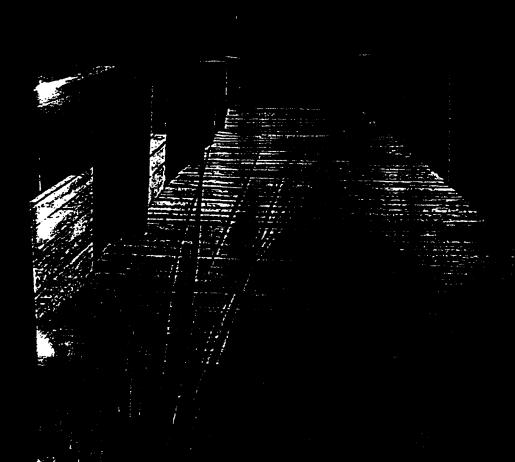
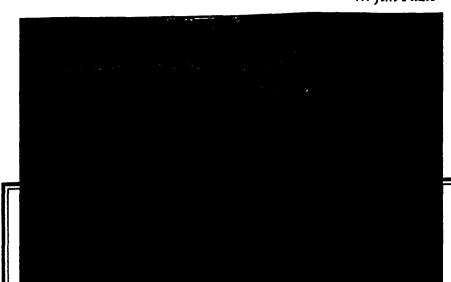


EXHIBIT 2

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Welcome to Hobe Sound!

Welcome to the Florida of years gone by. Where else can a guest fish on the reach, nike in a state park or take a moon-it stroll on miles of sandy beaches? Within the pages of this guide is information about the area and the members of the Hope Sound Chamber of Commerce.

As you read about our community, you will get in idea of the peaceful solitude of a small area with the opportunity to travel either north or south for the hustle and bustle of the city life.

We nope you enjoy reading about our community and will utilize our members for their services.

Sincerely.

Cathy Lieber Executive Director

Camy Liener,	
Car Targano, Tha	riene Laing,
Cincy Senroeder.	Kathy Spurgeon,
liv lacmason	Editoriai Assistanta

All information printed in this book is seemed correct, however, is not guaranteed.

66 Bignth Edition
The Journal Community Garde
Official Publication of the
PECE & UND CHAMBER OF COMMERCE
26 Box 1567, Hone Sound, 13, 33475
407, 646,4734

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	Photo, mother golphin and
	her half by louiptor Ranea
	Hallinga.

GETTING TO **KNOW** US

We've been discovered - again! The first time, if we heed the historians' words, was when Juan Ponce de León strode onto the shores of what be named La Florida (the flowery land) in 1513 searching for the Fountain of Youth. The most recent time is now -Hobe Sound is the bull's eye of the developers' target. In



S.E. Dixie Highway north of Bridge Road... a vestion of the days when Hobe Sound was 'Picture City."

the works are new homes, a new shopping center scheduled to open in 1996, and a facelift for Bridge Road and other parts of the "Village."

We look longingly sometimes and somewhat whimsically at where we've been, as we anticipate with measured excitement where we're going.

HISTORY

Hobe Sound has welcomed visitors in its warm and friendly way since at least 1696, with the arrival of one of its earliest and most famous tourists, Jonathan Dickinson, whose barkentine ship, the Reformation, ran ashore on Jupiter Island while en route to Philadelphia, Pennsylvania.

The Indians encountered by the Dickinson party during their unplanned visit were friendly - forerunners of the friendly natives our visitors encounter today. The Tekestas, from whom Tequesta got its name, and the Jove Indians, whose name the Spanish pronounced "Ho-bay" and who gave Hobe Sound its name, were helpful to the small Quaker party. (Although opinions vary about how we got our

(Continued on page 5)

